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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Wastren, Inc.

**File:** B-276093

**Date:** May 12, 1997

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Brad R. Wright, Esq., Wright Law Offices, for the protester.  
Nicole Porter, Esq., and Gena Cadieux, Esq., Department of Energy, for the agency.  
Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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## DIGEST

Protest that contracting agency improperly failed to evaluate proposals reasonably and in accordance with the solicitation's stated evaluation criteria is denied where the record does not support the allegations; a protester's mere disagreement with the agency's conclusions does not render the evaluation unreasonable.

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## DECISION

Wastren, Inc. protests the award of a contract to East Tennessee Mechanical Contractors (ETMC) under request for proposals (RFP) No. DE-RP05-96OR22416, issued by the Department of Energy (DOE) for the provision of facility and equipment maintenance and water plant operations to DOE's Oak Ridge Operations Office in Oak Ridge, Tennessee. Wastren argues that DOE improperly evaluated proposals.

We deny the protest.

DOE's Oak Ridge Operations Office requires a contractor to operate and maintain a 28 million gallons per day (MGD) municipal water treatment plant (the Oak Ridge water plant) and its related facilities; operate and maintain vehicle and heavy equipment maintenance and repair facilities; maintain various paved roads and grounds; and provide miscellaneous facility maintenance services and other support activities. The solicitation, issued as a small business set-aside on April 12, 1996, anticipated the award of a cost-plus-award fee contract to run for a 3-year base period, with an additional 2-year option period.

Award would be made, without discussions, to the firm whose offer represented the best value to the government, considering technical and business management factors and cost. To determine which proposal represented the best value to the government, DOE would weigh the apparent advantages of individual technical and

business management proposals against their evaluated probable cost to determine whether higher-rated proposals were worth the evaluated probable cost differential, if any. If two or more proposals were considered to be technically equal, cost would become the determining factor.

The RFP listed three technical and business management factors--personnel, planning, and organization; corporate experience; and past performance. At issue here, the first subfactor under the personnel, planning, and organization factor was entitled "Experience, Qualifications, Commitment and Availability of Proposed Key Personnel for Assignment to the Work."<sup>1</sup> Under this subfactor, DOE would evaluate offerors' proposed key personnel for work experience, education, and professional development directly related to the statement of work (SOW).

Cost proposals would be evaluated for reasonableness and realism to derive an evaluated probable cost for each proposal. The RFP required offerors to submit a standard form (SF) 1411 summarizing the costs for the phase-in period, base period, and option period, and to submit various schedules for different cost categories. Among other things, offerors were to submit a schedule of "other direct costs," utilizing figures provided in the RFP for capital equipment purchases and material costs.

Amendment No. 003, issued May 31, informed offerors that DOE intended to transfer the Oak Ridge water plant to the City of Oak Ridge by the end of the 3-year base term. As a result, the original option period of 2 years was changed to two 1-year options. Offerors were informed that the options to the contract "will only be exercised if DOE is unable to accomplish the transfer to the City of Oak Ridge." The amendment included revised proposal preparation instructions which again

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<sup>1</sup>Wastren's protest raised extremely broad allegations concerning the evaluation of proposals. The sole specific support for these allegations concerned DOE's evaluation of certain individuals under this key personnel subfactor; we address these specific allegations below. In its March 7, 1997 comments, Wastren, for the first time, raised a number of new allegations concerning DOE's evaluation of other individuals under this subfactor, as well as new allegations concerning DOE's evaluation of proposals under other evaluation factors and/or subfactors. Under our Regulations, protests based on other than solicitation improprieties must be filed within 10 days of when the protester knew or should have known their bases. 4 C.F.R. § 21.2(a)(2) (1997). At the latest, Wastren was provided the information that should have put it on notice of these bases of protest--DOE's documentation supporting its evaluation--on February 21. These new arguments, filed 14 days later, are untimely and will not be considered. Ralph G. Moore & Assocs., B-270686, B-270686.2, Feb. 28, 1996, 96-1 CPD ¶ 118 at 2-3 n.2.

required offerors to submit an SF 1411 summarizing the proposed costs for, among other things, both option years.

DOE received 11 proposals by the July 11 closing date. The members of the source evaluation committee reviewed and rated each technical and business management proposal, and the cost committee evaluated the cost proposals to arrive at evaluated probable costs for each. The evaluation committee subsequently met as a group to review all of the independent evaluations of the technical and business management proposals, discuss the proposals' strengths and weaknesses, and arrive at consensus scores.<sup>2</sup> The evaluation committee analyzed the cost information and recommendations made by the cost committee and arrived at its final evaluation results. ETMC, the incumbent contractor, was one of two firms whose proposals received the highest technical score--810 points out of a possible 1,000 points--and ETMC's evaluated probable cost was \$43,783,241. Wastren's proposal received the fourth highest technical score, 620 points, and its evaluated probable cost was \$44,163,308.

The evaluation committee considered the two highest-rated proposals to be technically equal and, with cost now the determining factor, concluded that ETMC's proposal represented the best value to the government. The source selection official reviewed the committee's report and other materials and concurred. ETMC was selected for award on December 19. After its debriefing, Wastren filed this protest challenging the agency's evaluation of proposals.<sup>3</sup>

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<sup>2</sup>Wastren's view notwithstanding, agency evaluators may discuss their individual evaluations with each other in order to reach a valid consensus score since such discussions generally operate to correct mistakes or misperceptions that may have occurred in the initial evaluation. See The Cadmus Group, Inc., B-241372.3, Sept. 25, 1991, 91-2 CPD ¶ 271 at 7-8. A consensus score need not be the score the majority of the evaluators initially awarded; a score may properly be determined after discussions among the evaluators. The overriding concern in these matters is whether the final scores assigned accurately reflect the relative merits of the proposals. See Household Data Servs., Inc., B-259238.2, Apr. 26, 1995, 95-1 CPD ¶ 281 at 4 n.2.

<sup>3</sup>By separate decision provided to the parties on February 18, 1997, this Office summarily dismissed several of Wastren's allegations prior to the receipt of an agency report. To the extent that Wastren's "exceptions" to these rulings, first raised in its March 7 comments 17 days later, constitute a request for reconsideration, such a request is untimely. 4 C.F.R. § 21.14(b) (1997) (request for reconsideration of a bid protest decision shall be filed not later than 10 days after the basis for reconsideration is known or should have been known).

In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the RFP's stated evaluation criteria. ESCO, Inc., 66 Comp. Gen. 404, 410 (1987), 87-1 CPD ¶ 450 at 7. A protester's mere disagreement with the agency's conclusions does not render the evaluation unreasonable. Id. Based on our review of the record here, we see no basis for concluding that the evaluation was unreasonable.

Wastren alleges that DOE improperly evaluated its proposal under the key personnel subfactor with respect to its proposed administration manager and proposed water plant manager.

DOE assigned a weakness to Wastren's proposal because, while the firm stated that its proposed administration manager would be responsible for payroll, there was no indication that he had any experience in this area. Wastren does not dispute the absence of this specific information from the proposal but contends that DOE should have realized that this individual's experience in accounting included experience in payroll. We do not agree. Nothing in the proposal suggests that these two areas are interchangeable; on the contrary, both the proposal and this individual's resume list accounting and payroll separately. Under the circumstances, we have no basis to question the agency's evaluation. The offeror has the burden of submitting an adequately written proposal, and an offeror's mere disagreement with the agency's judgment concerning the adequacy of the proposal is not sufficient to establish that the agency acted unreasonably. SC&A, Inc., B-270160.2, Apr. 10, 1996, 96-1 CPD ¶ 197 at 5.

DOE assigned another weakness to Wastren's proposal because the firm's proposed water plant manager's experience was with operating and maintaining an 8.5 MGD water treatment plant, as compared to the 28 MGD water treatment plant to be operated and maintained here. Wastren argues that its proposal indicates that this individual has extensive experience at other, larger water treatment plants, as well as extensive operations management and facility startup experience as a program manager. Wastren's point is not in dispute, as the agency assigned Wastren's proposal a strength for this very experience--involvement in the startup of an 86 MGD facility, the decommission of a 40 MGD facility, and the optimization and standardization of activities at two other 30 and 40 MGD facilities, as well as general experience in project management. However, while this experience was considered valuable, it was not viewed as interchangeable with the experience of operating and maintaining a 28 MGD water treatment plant. Absent any reasoned objection to this conclusion by the protester, we have no basis to question the agency's evaluation. Id. at 6.

Wastren further contends that DOE improperly failed to contact the references listed in its proposed key personnel's resumes to obtain additional information concerning their qualifications.

The solicitation did not require DOE to contact any references in connection with evaluating proposed key personnel, and the contracting officer states that no such references were contacted. Again, the burden of ensuring that the agency is aware of the relevant qualifications of an offeror's proposed key personnel is on the protester, not the agency. SC&A, Inc., supra. In its comments, Wastren argues that ETMC's proposed key personnel were given an unfair advantage in this regard because their abilities were known by the agency. There is no evidence that this is the case. The sole challenge to the evaluation of ETMC's proposal is that the firm's proposed project manager has little or no demonstrated experience in the areas specific to the SOW. The record shows that ETMC's proposal was downgraded for this very failing. Even assuming that the evaluators were familiar with ETMC's proposed key personnel by virtue of the firm's incumbency, it is not unusual for an offeror to enjoy an advantage in competing for a government contract by reason of its incumbency, and there is no requirement for the procuring agency to equalize that advantage where, as here, the advantage is not the result of preferential treatment or other unfair action by the procurement agency. Complere Inc., B-257946, Nov. 23, 1994, 94-2 CPD ¶ 207 at 5.

We now turn to Wastren's allegations concerning the evaluation of its cost proposal. At issue here, DOE adjusted Wastren's cost proposal upward to add the costs of operating and maintaining the water treatment plant because Wastren's cost proposal failed to include such costs, and to add material and capital equipment costs to put the proposal in conformance with the figures required for use by the RFP.<sup>4</sup>

Wastren complains that DOE improperly adjusted its cost proposal to include the costs of operating and maintaining the water treatment plant in the option years. The protester contends that amendment No. 003 "implied" that inclusion of such costs would not be necessary.

Wastren is incorrect. The language in the cover letter accompanying amendment No. 003 merely stated that the options would not be exercised if DOE were

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<sup>4</sup>DOE made several other adjustments to Wastren's cost proposal, each of which was detailed in the cost evaluation documents provided to Wastren on February 21. In its March 7 comments, Wastren complains about these adjustments as though it were unaware of their nature. To the extent that this complaint constitutes a protest basis, it is untimely filed more than 10 days after the protester was first on notice of this issue. Ralph G. Moore & Assocs., supra.

successful in turning the water plant over to the city; it did not instruct offerors not to provide cost information for operating and maintaining the water treatment plant during the option years. On the contrary, that very amendment included revised instructions to supply an SF 1411 to include the costs of performing under both option years. Further, amendment No. 0004, issued June 18, included a series of preproposal questions and answers regarding this procurement. In response to one question, DOE stated that it intended to negotiate with the city of Oak Ridge for the transfer of the water plant, but that these negotiations were still only in the preliminary stages and the agency must continue with its planned procurement. To be reasonable, an interpretation of solicitation language must be consistent with the solicitation when read as a whole and in a reasonable manner. Lithos Restoration, Ltd., 71 Comp. Gen. 367, 370 (1992), 92-1 CPD ¶ 379 at 4. Wastren's interpretation is not reasonable, and its allegation is without merit.

Wastren finally objects that DOE improperly upwardly adjusted its material and capital equipment costs. Wastren contends that it revised the figures that the RFP listed for use in making such calculations to account for the phase-in period. However, the RFP explicitly required offerors to calculate their costs using these figures, and made no provision for the phase-in or any other period. Hence, Wastren's decision to rely upon its own judgment to structure material and capital equipment costs was at its peril. A contracting agency cannot be expected to protect an offeror from the consequences of its refusal to comply with an RFP's unambiguous instructions. Valentec Sys., Inc., B-270880; B-270880.2, May 16, 1996, 96-1 CPD ¶ 231 at 4-5.

The protest is denied.

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of the United States